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No. 62

In the Supreme Court of the United States

OCTOBER TERM, 1931

AMERICAN HIDE AND LEATHER COMPANY, PETITIONER

v.

THE UNITED STATES

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The opinions of the Court of Claims (R. 27, 29) are reported in 71 C. Cls. 114, 123, and in 48 F. (2d) 430, 434.

JURISDICTION

The judgment of the Court of Claims was entered on November 3, 1930. (R. 29.) A motion for a new trial was overruled on April 6, 1931. (R. 29.) The petition for certiorari was filed April 29, 1931 (R. 32), and the writ was granted October 12, 1931 (R. 33). The jurisdiction of this Court rests on Section 3 (b) of the Act of February 13, 1925.

QUESTIONS PRESENTED

The petitioner filed tax returns for the years 1918 and 1919 upon the calendar-year basis and paid the tax shown by these returns. Since the petitioner's books were kept on the basis of a fiscal year ending June 30th, its returns should have been made upon the basis of its fiscal year. On these facts two questions arise:

1. Whether, in adjusting the taxes upon the fiscal-year basis, the Commissioner erred in failing to allocate any part of the payments of taxes originally assessed and paid for the calendar years 1918 and 1919 to the fiscal year 1920, so that they might be recovered under a claim for refund of taxes for the fiscal year 1920.

2. Whether the petitioner's claim for refund filed September 15, 1925, was too late to support recovery of any part of such tax payments if they should have been allocated to the fiscal year ending in 1920.

STATUTES INVOLVED

The statutes involved are set out in the Appendix, *infra*, pp. 22–26.

STATEMENT

On July 15, 1919, the petitioner filed an income and excess profits tax return, reporting income for the calendar year 1918. Based on the income reported, a total tax of $1,151,436.08 was shown. This amount was assessed and payment was made in installments during the year 1919. (R. 21.) In

August, 1920, an additional tax in the amount of $301,183.38 was assessed for 1918. (R. 22.) On November 3, 1920,[1] the petitioner filed a claim in abatement of the additional assessment and payment was not then made. (R. 22.) Later a further additional assessment of $425,643.35 for 1918 was proposed, but this assessment was not made. (R. 22.) On February 18, 1924, the assessment for 1918 was reduced by the issuance of a certificate of overassessment in the amount of $206,348.22. The total assessment then standing against petitioner for 1918 was $1,246,271.24, of which payment had been made during 1919 of $1,151,436.08. By a payment of $94,835.16 on March 1, 1924, the petitioner discharged its assessed liability for 1918. (R. 23.)

On May 15, 1920, petitioner filed an income and excess-profits tax return reporting income for the calendar year 1919. (R. 21.) Based on the income reported, a total tax of $1,187,444.67 was shown. This amount was assessed and the petitioner paid in installments during the year 1920, a total of $1,113,509.41, and a claim in abatement was filed for the remainder, $73,935.26. The claim in abatement was based on an amendment of the return, due to a reduction in inventory. (R. 21.)

On May 12, 1921, petitioner filed an income and excess-profits tax return showing a net loss for the calendar year 1920. No tax was therefore paid. (R. 21.)

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[1] R. 22 erroneously shows November 3, 1926.

Thereafter the petitioner filed various waivers and claims for refund looking to an adjustment of its tax liability on the calendar-year basis. On September 15, 1925, it filed a claim for refund of the tax claimed to have been paid for the period June 30, 1919, to June 30, 1920. (R. 23, 24.) On January 22, 1926, petitioner filed an amended return for the fiscal year ended June 30, 1919. This return showed a tax due for that period of $858,205.88, and a claim for refund was filed on that date claiming a refund of the amount by which the sum of one-half of the payment for 1918 and one-half of the payment for 1919 exceeded the tax shown on the amended return. (R. 24.)

On the same date, January 22, 1926, petitioner filed a similar return for the fiscal year ended June 30, 1920. This return showed a net loss of $1,739,036.96, and no tax was shown due. A claim for refund was filed on that date claiming a refund for this period of one-half of the payment for 1919. (R. 24, 25.)

On February 1, 1927, petitioner filed a claim for refund for the fiscal period January 1, 1918, to June 30, 1918, supported by an amended return for that period. This return showed a tax for this six months' period of $544,415.86. The refund claimed was the difference between one-half of the amount paid for 1918 and the amount shown on this return. (R. 25.)

The Commissioner of Internal Revenue determined that petitioner's returns should have been on the fiscal-year basis as indicated, as its books were kept on such a fiscal-year basis. The correct tax liability for each of the periods involved was then determined by the Commissioner to be—

$708,068.47 for the period Jan. 1, 1918, to June 30, 1918.

$896,314.83 for the fiscal year July 1, 1918, to June 30, 1919.

No tax for the fiscal year July 1, 1919, to June 30, 1920.

The Commissioner applied the total payment made in discharge of the 1918 assessment, $1,246,271.24, as in settlement of the tax liability of $708,068.47 determined for the period ended June 30, 1918, and issued a certificate of overassessment for $538,202.77. Of this amount, $94,835.16, paid in 1924, was refunded, together with interest thereon, as having been paid within four years of the claim for refund filed February 1, 1927. The balance not having been claimed in a timely claim for refund was held barred from refund. (R. 26.)

The Commissioner applied the total payment made in discharge of the calendar year 1919 assessment, $1,113,509.41, as in settlement of the tax liability of $896,314.83 determined for the period ended June 30, 1919, and issued a certificate of overassessment for $291,129.84. Of this amount, $73,935.26 had not been paid, as it was covered by

a claim for abatement. The claim for abatement was allowed in full and the remainder, $217,194.58, together with interest thereon, was refunded. (R. 26, 27.) Waivers were filed extending the period of limitation, and within this extended period the claim for refund was filed January 22, 1926.

No assessment had been made for 1920 and no certificate of overassessment was issued for that year.

The petitioner does not question the Commissioner's ruling that the determined overpayment for 1918 was barred. The petitioner questions the correctness of the application of payments which it made, based on the calendar year returns first filed. A computation showing the application of payments made by the Commissioner and as contended for by the petitioner follows.

The Court of Claims upon these facts dismissed the petition.

Application of Payments

1918

As made by the Commissioner:	
Amount paid against 1918 assessment	$1,246,271.24
Correct tax determined for fiscal period Jan. 1 to June 30, 1918	708,068.47
Overpayment for 1918	538,202.77
Refunded (with additional interest of $25,302.80)	94,835.16
Held barred by limitations	443,367.61
As contended for by Petitioner:	
Correct tax determined for period of Jan. 1 to June 30, 1918	708,068.47
Amount paid for 1918—One-half of 1918 payment ($1,246,271.24)	623,135.62
Underpayment	84,932.85

1919

As made by the Commissioner:		
Amount paid against 1919 assessment—		
Assessment	$1,187,444.67	
Not paid but under claim for abatement	73,935.26	
		$1,113,509.41
Correct tax determined for fiscal year July 1, 1918, to June 30, 1919		896,314.83
Amount refunded (with additional interest of $86,877.83)		217,194.58
As contended for by Petitioner:		
Amount paid for 1919:		
One-half of 1918 payment ($1,246,271.24)	$623,135.62	
One-half of 1919 payment ($1,113,509.41)	556,754.70	
		1,179,890.32
Correct tax determined for fiscal year July 1, 1918, to June 30, 1919		896,314.83
Overpayment		283,575.49
Refunded		217,194.58
Unrefunded		66,380.91

1920

Commissioner determined no payments and no tax liability for 1920.	
As contended for by Petitioner:	
Amount paid for 1920—One-half of 1919 payment ($1,113,509.41)	556,754.70
Correct tax determined for fiscal year July 1, 1919, to June 30, 1920	None.
Overpayment	556,754.70
Amount for which suit is brought.	

SUMMARY OF ARGUMENT

I

The petitioner filed its return for 1918 upon the calendar-year basis. Its later amended return for that year upon the fiscal-year basis indicated that it had overpaid its taxes for the fiscal period end-

period January 1, 1918, to June 30, 1918. Section 205, Revenue Act of 1918. The total tax ultimately assessed for this taxable fiscal period was $708,068.47. The petitioner had paid $1,246,271.24 under its erroneous calendar-year return for 1918. Of this amount, $708,068.47 was due upon income received during the true taxable year 1918. This resulted in an overassessment of $538,202.77; $94,835.16 of this had been paid in 1924 and was refunded. The repayment of the remainder, $443,367.61, was barred by the statute of limitations. The claim for its refund, suggesting the fiscal-year basis for the computation of the tax for the first time, was not filed until Februrary 1, 1927, more than four years after the payment of the amount assessed on the return as filed (Section 284 (b) (1) of the Revenue Act of 1926, c. 27, 44 Stat. Sec. 66, 68; *infra,* p. 26), and more than five years after the date of filing of the return for the calendar year 1918 under which the tax was paid (Section 284 (h) of the Revenue Act of 1926; *infra,* p. 26).

A similar situation existed as to the year 1919. The taxpayer filed a calendar-year return and paid taxes assessed on that basis of $1,113,509.41. (R. 21.) Upon readjustment to the fiscal-year basis the correct tax liability was determined to be $896,314.83. Under valid claims for refund $291,129.84 was refunded for this year. In 1920 petitioner's business was operated at a loss so that the readjustment of the returns from the calendar year to the fiscal

year did not change the ultimate situation. No tax was due under either method.

The petitioner filed its claim for refund for 1918 taxes too late. The tax can not be recovered, however deserving its case on the merits. *United States* v. *Felt & Tarrant Mfg. Co.*, 283 U. S. 269. This, we submit, is the real issue before this Court. The petitioner does not directly contest this point. It does not argue that it should recover the 1918 overpayment as such. It accepts the inevitable and attempts to obtain the refund by a more devious method. But an analysis of this method indicates that the ultimate object is to obtain this 1918 overpayment.

The petitioner contends that its payment for the entire calendar year 1918 should be equally divided, and half arbitrarily allocated as a payment of the tax upon income received in the last half of 1918, from July 1 to December 31, 1918. This is urged without any showing that its income was equally distributed throughout the year. In fact, seasonal business resulted in the receipt of income during the first six months of 1918, on which a tax was assessed of $708,068.47. This was the correct tax based on the income for that period. It was approximately 7/12ths of the total tax paid for the calendar year 1918. The arbitary allocation of 6/12ths of the tax to that period without regard to income is contrary to the reasoning of several court decisions. *Commisisoner* v. *Pittsburgh Knife & Forge Co.*, 30

F. (2d) 522 (C. C. A. 3d); *Commissioner* v. *Ragley Lumber Co.*, 30 F. (2d) 683 (C. C. A. 5th). See *Daily Pantagraph, Inc.*, v. *United States*, 282 U. S. 813.[1]

The conclusion reached is obviously unsound. The correct tax liability for the fiscal period 1918 (January 1, 1918, to June 30, 1918) is admittedly $708,068.47. Under the petitioner's theory there would be allocated to the payment of this liability only one-half of the amount paid for the calendar year 1918, or $623,135.62. This results in an underpayment for that period of $84,932.85. This is insisted upon, although the collection by the Government of the underpayment of $84,932.85 for 1918 has long been barred. By carrying this method of reallocation through the three taxable years in question, the petitioner seeks ultimately a refund of $556,754.72 for the fiscal year ending June 30, 1920. Only by this labored process is the taxpayer able to convert overpayments for two calendar years into an underpayment for one year and overpayments for two other years.

In place of the taxpayer's application of the tax payment by arbitrarily allowing six-twelfths of

[1] See *De Haven Mfg. Co.* v. *United States*, 31 F. (2d) 999 (E. D. N. Y.); and *Ennis-Brown* v. *Commissioner*, 10 B. T. A. 1248, where the taxpayers were not permitted to divide a loss in a taxable year into twelve equal parts so as to allocate certain twelfths to the period set out in Section 204 (b) of the Revenue Act of 1918 and deduct such parts of the 1919 losses from 1918 gains under the provisions of that Section.

the tax paid for the calendar year 1918 to the taxable period ending June 30, 1918, it would have been more reasonable to allocate the payments according to income actually received by the petitioner during the fiscal period. If this had been done, no underpayment for the fiscal year 1918 would have resulted. But the petitioner does not urge this theory, and if the contention were made it would be unsound. The taxpayer can not insist upon an application of payment based on an accurate computation of income, for this would involve the determination of tax liabilities for six-month periods. Taxable years are separate units and the income tax is to be computed upon net income for annual accounting periods. See *Commissioner* v. *Sanford & Brooks Co.*, 282 U. S. 359.

The Revenue Act of 1918 (and all other revenue acts) provides, by Section 230, that a tax shall be levied, collected, and paid "for each taxable year" upon the income of corporations. Section 200 of the Revenue Act of 1918 defines the taxable year to be the calendar year or a fiscal year ending within the calendar year. The net income upon which the tax is levied is defined to be, generally, all the receipts or accruals within the taxable year, less expenses paid or incurred during the taxable year. The corporation is required to make a return showing such items. The amount shown on the return is then payable by the corporation in one payment or in quarterly payments.

Thus, without regard to the accounting period involved, which depends on the corporation's bookkeeping, the tax is imposed and assessed for the taxable year on the income for the taxable year, and when paid is a payment for that particular taxable year. Payments made for one taxable year must be treated as payments for that taxable year notwithstanding the fact that certain items of income have been erroneously included therein, or excluded therefrom. If such items have been erroneously included, and a refund is sought of the resultant overpayment, the refund claim must be addressed to that taxable year and its allowance is to be determined by the statutes relating to that taxable year. Taxes are assessed for definite taxable years, and such taxable years are units not subject to division. It is only by such identification of payments to liabilities that full force can be given to the many provisions relating to refunds and credits. These are not the same for all taxable years. (See Section 252, 1921 Act; Section 281 (e), 1924 Act, as amended by the Act of March 3, 1925; all subsequently reenacted by Section 284 of the Revenue Act of 1926.)

Furthermore, as the court below pointed out in *Mann* v. *United States*, 71 C. Cls. 31, 44 F. (2d) 1005, certiorari denied, 283 U. S. 860, the calendar-year returns must be treated as statutory returns for the proper fiscal year. The court said (p. 1008):

> When a taxpayer files a calendar-year return when he should have filed a return for

> the fiscal year ending during such calendar year, this return, although erroneous, must be treated as a return under the statute, and it can only be treated as a return for a taxable period or year that has ended during the period covered by it. It can not be treated as a return for a portion of two taxable years, for there is no authority in the statutes or in the regulations for such a return, and, if it were regarded as a return for two periods, each falling in separate taxable years, it could not be treated as a return for any purpose under the statute. It would therefore necessarily follow that a tax assessed and paid on a return for a calendar year, when the true accounting period of plaintiff was a fiscal year ending within that calendar year, must be regarded as having been assessed and paid for the fiscal year, even although the taxpayer filed his return on the wrong basis. If this were not true, it would be necessary to construe the provisions of section 284 (a) of the Revenue Act of 1926 as authorizing the credit of an amount overpaid for one taxable year to a tax due for the same taxable year. Obviously no such construction can be placed on section 284 (a). Under plaintiff's contention, a credit would be made every time an adjustment is made for a taxable year for any reason.

The taxpayer in this case overpaid its 1918 tax liability. Upon ascertainment of that fact the Commissioner was authorized to make a credit of

any such overpayment against taxes due for any other period. Overpayments for one year can not be treated as payments for the subsequent year.

The petitioner relies upon *Paso Robles Mercantile Co.* v. *Commissioner,* 12 B. T. A. 750, affirmed on other points not raised in the instant case, 33 F. (2d) 653 (C. C. A. 9th), certiorari denied, 280 U. S. 595, and subsequent Board decisions. Although the actual decision in these cases is not on the precise issue involved here, the Board reached these decisions on reasoning in conflict with that of the court below in the instant case, but stated that it found no authority of law or regulations to support its position. The matter of the allocation of payments was not before the Circuit Court of Appeals. The Board of Tax Appeals has apparently followed its decision in the *Paso Robles* case in subsequent cases, but in the case of *W. H. Hill Company* v. *Commissioner,* 23 B. T. A. 605, a different position was taken by the Board.

The petitioner here complains that the Commissioner of Internal Revenue was without authority to apply the payments contrary to the expressed intention of the taxpayer at the time of payment, yet the taxpayer is now seeking a refund of taxes for the year 1920, when as a matter of fact no sum of money was paid by the petitioner for either the calendar year 1920 or the fiscal year ending June 30, 1920. Its claim filed September 15, 1925, was for the refund of taxes for the fiscal year end-

ing June 30, 1920. No such taxes had been paid. The only way the petitioner can show an overpayment for the year 1920 is arbitrarily to assign to that year one-half of the payment made for the calendar year 1919. This it claims it can do because on a fiscal basis a return for the taxable year 1920 should have included income received during the last six months of 1919, without any showing whatever as to whether any income was received during the last six months of the year 1919.

We submit that the payments should be treated as payments in liquidation of tax liability based on the liability created by the statute. Taxes are assessed for taxable years and payments must follow such assessments. The action of the Commissioner in the present case was a reasonable method of handling a situation caused by the petitioner's failure to comply with the express direction of Section 212(b) of the Revenue Act of 1918 (*infra*, pp. 22–23). It is not contrary to any provisions of the statute or regulations, and accordingly it should be upheld.

The petitioner in its brief (Pet. Br. pp. 18, 19) suggests that under later rulings of the Bureau of Internal Revenue based on decisions of the Board of Tax Appeals the correct tax liability for the period January 1, 1918, to June 30, 1918, should be $554,415.86 instead of $708,068.47. This question is not before the court. The correct tax liability

for this period has never been an issue in this case, but if it were, the findings of the Court of Claims establish the liability to be $708,068.47.

II

IF THE PETITIONER DID OVERPAY ITS TAXES FOR THE FISCAL YEAR ENDING JUNE 30, 1920, RECOVERY OF THE OVERPAYMENT IS BARRED BECAUSE THE CLAIM FOR REFUND WAS FILED TOO LATE

Section 284 (b) (1) of the Revenue Act of 1926 (*infra*, p. 26) provides that no refund shall be made

> after four years from the time the tax was paid * * * unless before the expiration of such period a claim therefor is filed by the taxpayer (with certain exceptions not here important).

It is further provided, in Section 284 (h) of the Revenue Act of 1926 (*infra*, p. 26), that the provisions of Section 284 shall not

> bar from allowance a claim in respect of a tax for the taxable year 1919 or 1920 if such claim is filed before the expiration of five years after the date the return was due.

The petitioner paid the sum of $1,113,509.41 during the year 1920. The final payment of this sum was made on December 24, 1920. (R. 21.) It is part of this sum which the petitioner is now seeking to recover. The claim for refund upon which the petitioner now relies was not filed until September 15, 1925 (R. 23), more than four years after the payment was made. Thus, since the claim was

filed more than four years after the tax was paid, recovery can not be had under Section 284 (b) (1) of the Revenue Act of 1926, *supra*.[3]

But the petitioner contends that the claim was filed within time under the provisions of Section 284 (h) of the Revenue Act of 1926, *supra*, which allows recovery if the claim for refund was filed "before the expiration of five years after the date the return was due." It argues that it should have made a return on the basis of a fiscal year ending June 30, 1920, that such a return would have been due on September 15, 1920, and that therefore the claim filed September 15, 1925, was within time. Under *Burnet* v. *Willingham Loan & Trust Co.*, 282 U. S. 437, it is clear that the claim filed on September 15, 1925, is within the five-year period if September 15, 1920, was the due date from which the period started to run.

But this argument disregards the important fact that the tax, recovery of which is sought, was paid

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[3] Moreover, the taxpayer can not succeed by virtue of the following provision in Section 284 (g) of the Revenue Act of 1926:

"If the taxpayer has, on or before June 15, 1926, filed such a waiver in respect of the taxes due for the taxable year 1920 or 1921, then such credit or refund relating to the taxes for the taxable year 1920 or 1921 shall be allowed or made if claim therefor is filed either on or before April 1, 1927, or within four years from the time the tax was paid."

Although a claim for refund was filed before April 1, 1927, the waiver which the taxpayer filed in respect of the taxable year 1920 was not filed until December 15, 1926. (R. 23.) The provisions of Section 284 (g), *supra*, apply only if the waiver was filed before June 15, 1926.

under a return for the calendar year 1919, and this return was due March 15, 1920. We submit that the statute means by "the return" the return which was actually filed and under which the tax was paid. This clearly appears when the history of Section 284 (h) of the Revenue Act of 1926, *supra*, is considered. The phrase "the return was due" first made its appearance in the revenue laws in Section 252 of the Revenue Act of 1918 (*infra*, pp. 23–24) where it was provided:

> That if, upon examination of any return * * * it appears that an amount of income * * * tax has been paid in excess of that properly due, then * * * the amount of the excess shall be credited [or refunded] * * *: *Provided*, That no such credit or refund shall be allowed or made after five years from the date when the return was due, unless before the expiration of such five years a claim therefor is filed by the taxpayer.

From this it is plain that "the return" is the return of which "examination" has been made, and the only return which is subject to "examination" is the return which has actually been filed. The same provision was continued in Section 252 of the Revenue Act of 1921 (*infra*, pp. 24–25). The period of limitation thus established for returns filed for the taxable years 1919 and 1920 was again continued by Section 281 (f) of the Revenue Act of 1924 (*infra*, pp. 25–26), and by Section 284 (h)

of the Revenue Act of 1926 (*infra*, p. 26), which is the section now in question.

We submit that the words "the return" are used in the latter section in just the sense in which they were used in Section 252 of the Revenue Act of 1918, *supra*, and that consequently "the return" is the return which was actually filed and under which taxes were paid. That return was due March 15, 1920. The claim for refund filed September 15, 1925, was therefore filed too late, and this suit can not be supported.

CONCLUSION

The decision below is correct and should be affirmed.

Respectfully submitted.

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NOVEMBER, 1931.

APPENDIX

STATUTES INVOLVED

The Revenue Act of 1918, c. 18, 40 Stat. 1057, 1058, 1064, 1075, 1085, provides in part:

SEC. 200. That when used in this title—

The term "taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the net income is computed under section 212 or section 232. The term "fiscal year" means an accounting period of twelve months ending on the last day of any month other than December. The first taxable year, to be called the taxable year 1918, shall be the calendar year 1918 or any fiscal year ending during the calendar year 1918; * * *.

SEC. 212. (a) That in the case of an individual the term "net income" means the gross income as defined in section 213, less the deductions allowed by section 214.

(b) The net income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made upon such basis and in such manner as in the opinion of the Commissioner does clearly reflect the income. If the taxpayer's annual account-

ing period is other than a fiscal year as defined in section 200, or if the taxpayer has no annual accounting period or does not keep books, the net income shall be computed on the basis of the calendar year.

If a taxpayer changes his accounting period from fiscal year to calendar year, from calendar year to fiscal year, or from one fiscal year to another, the net income shall, with the approval of the Commissioner, be computed on the basis of such new accounting period, subject to the provisions of section 226.

SEC. 227. (a) That returns shall be made on or before the fifteenth day of the third month following the close of the fiscal year, or, if the return is made on the basis of the calendar year, then the return shall be made on or before the fifteenth day of March. The Commissioner may grant a reasonable extension of time for filing returns whenever in his judgment good cause exists and shall keep a record of every such extension and the reason therefor. Except in the case of taxpayers who are abroad, no such extension shall be for more than six months.

SEC. 252. That if, upon examination of any return of income made pursuant to this Act, the Act of August 5, 1909, entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," the Act of October 3, 1913, entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," the Revenue Act of 1916, as amended, or the Revenue Act of 1917, it appears that an amount of income, war-profits, or excess-profits tax has been paid in excess of that properly due, then, notwithstanding the pro-

visions of section 3228 of the Revised Statutes, the amount of the excess shall be credited against any income, war-profits, or excess-profits taxes, or installment thereof, then due from the taxpayer under any other return, and any balance of such excess shall be immediately refunded to the taxpayer: *Provided,* That no such credit or refund shall be allowed or made after five years from the date when the return was due, unless before the expiration of such five years a claim therefor is filed by the taxpayer.

Section 252 of the Revenue Act of 1921, c. 136, 42 Stat. 227, 268, provides as follows:

> SEC. 252. That if, upon examination of any return of income made pursuant to this Act, the Act of August 5, 1909, entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," the Act of October 3, 1913, entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," the Revenue Act of 1916, as amended, the Revenue Act of 1917, or the Revenue Act of 1918, it appears that an amount of income, war-profits or excess-profits tax has been paid in excess of that properly due, then, notwithstanding the provisions of section 3228 of the Revised Statutes, the amount of the excess shall be credited against any income, war-profits or excess-profits taxes, or installment thereof, then due from the taxpayer under any other return, and any balance of such excess shall be immediately refunded to the taxpayer: *Provided,* That no such credit or refund shall be allowed or made after five

years from the date when the return was due, unless before the expiration of such five years a claim therefor is filed by the taxpayer: *Provided further,* That if upon examination of any return of income made pursuant to the Revenue Act of 1917, the Revenue Act of 1918, or this Act, the invested capital of a taxpayer is decreased by the Commissioner, and such decrease is due to the fact that the taxpayer failed to take adequate deductions in previous years, with the result that an amount of income tax in excess of that properly due was paid in any previous year or years, then, notwithstanding any other provision of law and regardless of the expiration of such five-year period, the amount of such excess shall, without the filing of any claim therefor, be credited or refunded as provided in this section: *And provided further,* That nothing in this section shall be construed to bar from allowance claims for refund filed prior to the passage of the Revenue Act of 1918 under subdivision (a) of section 14 of the Revenue Act of 1916, or filed prior to the passage of this Act under section 252 of the Revenue Act of 1918.

Section 281 (f) of the Revenue Act of 1924, c. 234, 43 Stat. 253, 302 (U. S. C., Title 26, sec. 1065), provides as follows:

SEC. 281. * * *

(f) This section shall not (1) bar from allowance a claim for credit or refund filed prior to the enactment of this Act which but for such enactment would have been allowable, or (2) bar from allowance a claim in respect of a tax for the taxable year 1919 or 1920 if such claim is filed before the expira-

tion of five years after the date the return was due.

Section 284 of the Revenue Act of 1926, c. 27, 44 Stat. 9, 66, 68, provides in part as follows:

(b) Except as provided in subdivisions (c), (d), (e), and (g) of this section—

(1) No such credit or refund shall be allowed or made after three years from the time the tax was paid in the case of a tax imposed by this Act, nor after four years from the time the tax was paid in the case of a tax imposed by any prior Act, unless before the expiration of such period a claim therefor is filed by the taxpayer; and

* * * * *

(h) Except as provided in subdivision (d) this section shall not (1) bar from allowance a claim for credit or refund filed prior to the enactment of this Act which but for such enactment would have been allowable, or (2) bar from allowance a claim in respect of a tax for the taxable year 1919 or 1920 if such claim is filed before the expiration of five years after the date the return was due. U. S. C. Sup. IV, Title 26, sec. 1065.

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